

Message Text

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ACTION EB-07

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E.O. 11652: N/A

TAGS: EAIR, CA

SUBJ: CIVAIR: NONSCHEDULED AIR SERVICES - AEROAMERICA INC.

REF: STATE 441

1. BEGIN SUMMARY. REFUSAL OF AEROAMERICAN APPLICATION APPEARS BASED ON TWO CONSIDERATIONS: (A) PROPOSED CARRAIGE OF CANADIAN-ORIGINATING PASSENGER TRAFFIC BY A NON-DESIGNATED US CARRIER IN A MANNER WHICH WOULD NOT BE PERMITTED A CANADIAN CARRIER; (B) ASSOCIATION OF THE PRINCIPALS IN THE COMPANY WITH A TRAVEL CLUB WHICH HAS BEEN THE OBJECT OF CAB ENFORCEMENT ACTION. LATTER CONSIDERATION WAS, HOWEVER, GIVEN COGNIZANCE ONLY IN AN INFORMAL MANNER. ENDS SUMMARY.

2. AN AIR TRANSPORT COMMITTEE (ATC) STAFF OFFICER, WITH WHOM TCO DISCUSSED THE CASE, WAS EXTREMELY HESITANT AT FIRST TO TALK FRANKLY ABOUT IT AND WOULD ONLY SAY THAT THE COMMITTEE "IN ITS WISDOM" HAD DECLINED TO APPROVE THE APPLICATION AND HAD NO OBLIGATION TO DO SO. HOWEVER, WHEN PRESSED, HE ADMITTED THAT A BASIC PROBLEM WAS COMMITTEE'S DISLIKE OF THE COMMERCIAL OPERATOR WHICH HAS NO COUNTERPART IN THE CANADIAN REGULATORY SCHEME. HE POINTED TO CANADIAN NOTE OF SEPTEMBER 30 (OTTAWA 3241), IN RESPONSE TO OURS OF AUGUST 27, AND EMPHASIZED THAT GOC HAD AGREED

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TO THE MAINTENANCE OF EXISTING COMMERCIAL OPERATORS

ON THE ELIGIBLE LIST BUT HAD NOT COMMITTED ITSELF TO PERMIT ADDITION OF NEW ONES. HE OBSERVED THAT US NOTE HAD STATED THAT THE VAST MAJORITY OF OPERATIONS BY COMMERCIAL OPERATORS ORIGINATE IN UNITED STATES AND SUGGESTED AN EMPHASIS ON THE CARRIAGE OF GOODS, PARTICULARLY AUTOMOTIVE PARTS. AEROAMERICA'S APPLICATION, IN CONTRAST, WAS FOR PASSENGER TRAFFIC ORIGINATING IN CANADA. FURTHERMORE, IT WAS THE FIRST DECISION BY THE COMMITTEE SINCE SEPTEMBER 30 NOTE OF AN APPLICATION FROM A NEW CARRIER SEEKING A PLACE ON THE ELIGIBLE LIST. IT THUS POSED A POLICY QUESTION TO THE COMMITTEE WHICH WAS DECIDED IN THE NEGATIVE.

3. OUR SOURCE WOULD NOT STATE CATEGORICALLY THAT THIS CASE WAS NECESSARILY A PRECEDENT SETTING ONE, BUT HE APPEARED TO SUGGEST THIS AT LEAST WITH RESPECT TO APPLICATIONS BY SUCH OPERATORS SEEKING TO ENPLANER PASSENGER TRAFFIC IN CANADA. APPLICATIONS BY NEW OPERATORS SEEKING TO CARRY US-ORIGINATING AUTO PARTS, HE SUGGESTED, WOULD ENCOUNTER NO SIGNIFICANT PROBLEMS. HOWEVER, HE ALSO POINTED OUT THAT THERE WERE CERTAIN CIRCUMSTANCES ABOUT THIS APPLICATION THAT MIGHT NOT OCCUR IN OTHERS. HE NOTED THAT AEROAMERICA'S APPLICATION TO ATC STATED THAT ITS PRESIDENT (ALSO A DIRECTOR) WAS ONE A. JOEL EISENBERG WHO WAS REFERRED TO IN CAB NEWS RELEASE 74-204 (SEPTEMBER 23, 1974) AS A FOUNDER OF CLUB INTERNATIONAL, A TRAVEL CLUB WHICH CAB HAD FOUND IN VIOLATION OF FEDERAL AVIATION ACT. ITS "CEASE AND DESIST" ORDER, ACCORDING TO THE RELEASE, RAN SPECIFICALLY AGAINST EISENBERG AND HIS WIFE AS INDIVIDUALS. WHILE ATC DID NOT SPECIFICALLY DENY THE AEROAMERICA APPLICATION BECAUSE OF THIS CAB ACTION, INFORMATION ABOUT IT WAS AVAILABLE TO THE COMMITTEE MEMBERS AND WAS UNDOUBTEDLY A FACTOR IN THEIR DECISION.

4. COMMENT: A REJECTED APPLICANT HAS THE RIGHT TO REQUEST ATC TO REVIEW ITS DECISION AND THERE IS NO TIME LIMIT WITHIN WHICH THIS RIGHT MUST BE EXERCISED. HOWEVER, OUR CONVERSATION WITH THIS OFFICIAL LIMITED OFFICIAL USE

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TURNED UP NO GROUNDS ON WHICH SUCH A REVIEW MIGHT BE REQUESTED IN THE EXPECTATION OF A FAVORABLE OUTCOME. WE HAVE BEEN PROMISED A COPY OF THE FULL LETTER SENT AEROAMERICA DENYING ITS APPLICATION AND WILL FORWARD IT TO STATE (STYLES) AND CAB (CHESEN) WHEN RECEIVED. ITS LANGUAGE MAY SUGGEST A POSSIBLE BASIS FOR SO REQUESTING.

5. SHOULD THE DEPARTMENT WISH TO MAKE A FURTHER REPRESENTATION TO GOC WITH RESPECT TO THE GENERAL PROPOSITION OF ADDING NEW CARRIERS TO THE ELIGIBLE LIST, WE SUGGEST THAT THIS NOT BE DONE IN THE CONTEXT OF THIS APPLICATION. IN VIEW OF THE CIRCUMSTANCES DESCRIBED IN PARA 3 ABOVE, A REPRESENTATION RELATING TO AEROAMERICA WOULD BE UNLIKELY TO ELICIT A FAVORABLE RESPONSE. WE HAVE BEEN INFORMED, HOWEVER, THERE ARE NO OTHER APPLICATIONS FROM NEW CARRIERS NOW PENDING AT THE ATC. PORTER

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